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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/604,965

06/28/2000

Mark Kirkpatrick

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38823

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05/30/2008

THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP/

AT&T Delaware Intellectual Property, Inc.

600 GALLERIA PARKWAY, S.E.

SUITE 1500

ATLANTA, GA 30339-5994

EXAMINER

OPSASNICK, MICHAEL N

ART UNIT

PAPER NUMBER

2626

MAIL DATE

DELIVERY MODE

05/30/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/604,965	<b>Applicant(s)</b> KIRKPATRICK, MARK	
	<b>Examiner</b> MICHAEL N. OPSASNICK	<b>Art Unit</b> 2626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,5,7,8,12-15,17-22,25,27,28,30,34,36,38-40,42,43 and 45-58 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,2,5,7,8,12-15,17-21,28,30,34,36,38-40,42,43,45-50 and 53-58 is/are allowed.
- 6) ☒ Claim(s) 22,25,27,51,52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 22,25,27,51,52 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. As per the most recent interpretation of the Interim Guidelines regarding 35 U.S.C. 101, claims 22,25,27,51,52 are non-statutory because these claims are toward a computer program, and as claimed, does not define any structural and functional interrelationship between the computer program and other claimed elements of a computer which permit the computer program's functionality to be realized (Warmerdam, 33 F.3d at 1361,31 USPQ2d at 1760; Lowry, 32 F.3d at 1583-84, 32 USPQ2d at 1035). Examiner recommends changing the preamble of claim 22 to read "A computer readable medium storing computer readable instructions that causes a computer to perform the steps of providing email notification to a plurality of subscriber comprising:" to overcome the 35 U.S.C. 101 rejection.

### ***Allowable Subject Matter***

3. Claims 1,2,5,7,8,12-15,17-22,25,27,28,30,33,34,36,38-40,42,43,45-58 are allowable over the prior art of record.

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4. The following is a statement of reasons for the indication of allowable subject matter:

As per the independent claims, the claim limitations pertaining to the subscriber setting the polling preferences of other related email accounts (of the subscriber) is not explicitly taught by the prior art of record.

***Response to Arguments***

5. Applicant's arguments filed 4/20/07 have been fully considered but are moot in view of the new grounds of rejection.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Please see related art listed on the PTO-892 form.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Opsasnick, telephone number (571)272-7623, who is available Tuesday-Thursday, 9am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Richemond Dorvil, can be reached at (571)272-7602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Michael N. Opsasnick/  
Primary Examiner, Art Unit 2626  
5/24/08